

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September, 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I.(a) PLAINTIFFS (Co-Executors)

HP HOOD LLC

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF CHELSEA, MA
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANT

EVERSTECH LLC and DENNIS EVERS individually

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT VIGO - IN
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

DANIEL J. HURTEAU, ESQ.
NIXON PEABODY LLP
Omni Plaza, Suite 900, 30 South Pearl Street
Albany, NY 12207 (518) 427-2650

ATTORNEYS (IF KNOWN)

Unknown

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 152 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 U.S.C. 158 <input type="checkbox"/> 423 Withdrawal 28 U.S.C. 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title VXi <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Breach of Contract / Breach of Warranty

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND
\$1,458,695.33

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) (See instructions):
IF ANY None

Judge: _____

Docket Number _____

DATE June 16, 2006

SIGNATURE OF ATTORNEY OF RECORD: _____

DANIEL J. HURTEAU, ESQ.

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

HP HOOD LLC,

SUMMONS IN A CIVIL CASE

-vs-

CASE NUMBER:

EVERSTECH LLC and
DENNIS EVERS, Individually,

TO: EVERSTECH LLC
107 Southglen Drive
Terre Haute, Indiana 47802

DENNIS EVERS
c/o EVERSTECH LLC
107 Southglen Drive
Terre Haute, Indiana 47802

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

NIXON PEABODY LLP
Daniel J. Hurteau, Esq.
Omni Plaza, Suite 900
30 South Pearl Street
Albany, New York 12207

an answer to the complaint which is herewith served upon you, within **twenty (20)** days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

CLERK

DATE

(BY) DEPUTY CLERK

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

HP HOOD LLC,

Plaintiffs,

- vs -

EVERSTECH LLC and
DENNIS EVERS, Individually,

Defendants.

**VERIFIED COMPLAINT
(Jury Trial Claimed)**

CIVIL ACTION NO.

Plaintiff, HP HOOD LLC ("Hood"), by its attorneys NIXON PEABODY LLP as and for its complaint against defendants, respectfully alleges, upon information and belief, as follows:

NATURE OF ACTION

1. Hood is a well-known manufacturer and distributor of dairy products, including milk, cheese, cottage cheese, and sour cream. Hood owns and operates a dairy processing facility in Vernon, New York, which primarily produces cottage cheese and yogurt. One of the crucial aspects of this dairy processing facility is the wastewater treatment system. Hood contracted with Defendant Everstech LLC ("Everstech") to design and implement a new wastewater treatment system based upon bioaugmentation technology in order to be more environmentally friendly and cost efficient. Defendant Dennis Evers ("Evers") is Everstech's primary engineer who was the individual in charge of the design and installation of Hood's new wastewater treatment system. After a year of Everstech's repeated attempts to commission the new wastewater treatment system that Everstech designed and installed, the system never worked correctly, and Hood had to

disassemble it in April 2006. Hood's damages as a result of the failed wastewater treatment system are approximately \$1.5 million.

2. Hood alleges that Everstech negligently designed and installed the wastewater treatment system, breached its contractual obligations to Hood, and breached its express warranties to Hood. Hood alleges that Evers negligently designed and installed the wastewater treatment system, breached his implied warranties to Hood, and failed to obtain the proper engineering license in New York.

3. These actions by Everstech, as well as by Evers individually, give rise to several causes of action sounding in negligence, contract, breach of express warranty, and breach of implied warranty for which Hood seeks compensatory damages. Hood also seeks specific performance against Everstech, because Everstech has refused to provide Hood with its errors and omissions insurance coverage as mandated in the contract.

PARTIES AND JURISDICTION

4. Hood is a manufacturer and distributor of dairy products, including milk, cheese, cottage cheese, sour cream, and yogurt. Hood is organized and existing under the laws of the Commonwealth of Massachusetts. It has a principal place of business in Chelsea, Massachusetts.

5. Everstech is a professional engineering company, specializing in engineering design services, process design engineering, project management, systems operations, and environmental consulting. Everstech is organized and existing under the laws of the State of New York. It has a principal place of business located at 107 Southglen Drive, Terre Haute, Indiana 47802.

6. Evers is employed by Everstech as an engineer. Upon information and belief, Evers resides in Indiana.

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332, because the amount in controversy exceeds \$75,000, exclusive of interest and costs.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1491.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

A. HOOD'S DAIRY PROCESSING FACILITY IN VERNON, NEW YORK

9. Hood owns and operates a dairy processing facility in Vernon, New York, which primarily produces cottage cheese and sour cream (the "Vernon Facility").

10. One of the crucial aspects of the Vernon Facility is the wastewater treatment system. The wastewater treatment system has been historically expensive to operate and produces solid and liquid wastes which are treated extensively before being added to the municipal sewage treatment system within established parameters.

11. In 2002, Hood desired to replace the Vernon Facility's wastewater treatment system with a system using updated technology which would be more environmentally friendly and cost efficient.

12. During the process of investigating the various options, Everstech was recommended to Hood. Thereafter, Hood and Everstech began discussing Everstech's bioaugmentation technology and its specialized scPROcess wastewater treatment system.

13. Everstech completed pilot testing and issued a report by December 2002. In 2003 and 2004, further discussions took place between Everstech and Hood regarding the potential full scale project as set forth below.

B. EVERSTECH'S scPROcess

14. Before Hood entered into a contract with Everstech, Everstech represented to Hood that Everstech's scPROcess utilizes bio-cultures to treat wastewater systems with elevated levels of chemical oxygen demand ("COD") and biological demand ("BOD"). The bio-culture digests COD and BOD and creates a bacterial byproduct suitable for use as a protein nutritional supplement for animal feed.

15. As explained by Everstech to Hood, Everstech's specialized scPROcess operates in a sequence similar to a "high-rate aeration" activated sludge process with no sludge return. The various proportioned mix of wastewaters enter a Balance Tank to form a composite mix of plant wastewater, lactose permeate, and high-strength wastes not typically treated in an existing wastewater treatment plant. A system of pumps, valves, and controls allow the various wastewater constituents to be proportioned into a mix that would somewhat mimic a full-scale situation. Facultative bio-cultures are delivered to the Balance Tank.

16. Composite wastewater from the Balance Tank is batch delivered to a Facultative Tank to begin the process of biodegradation, specifically to convert lactose to organic acids. From the Facultative Tank, the wastewater flows to an Aeration Tank of approximately one day hydraulic retention time where the conversion of the organic constituents of the wastewater to protein is designed to take place. Wastewater from the Aeration Tank is delivered to a centrifuge for partial dewatering prior to a final drying step.

17. In theory, Everstech's scPROcess feeds organic matter, typically present in dairy wastewater in the form of protein, fats, and sugar (lactose), to micro-organisms as a food source which converts the organic matter to a protein cell mass. Oxygen, supplied via

aeration, is utilized by the micro-organisms to produce carbon dioxide and the energy required to synthesize new cell mass. The cell mass is a mix of liquid and suspended solids which leaves the Aeration Tank to be dewatered by a Centrifuge then dried by a Dryer. The Centrifuge is supposed to achieve 35% solids, and the Dryer is supposed to achieve 95% solids. The liquid is supposed to meet pre-established effluent requirements to be discharged in the municipal sewerage system without further treatment.

C. HOOD CONTRACTS WITH EVERSTECH FOR THE scPROcess

18. Based upon the aforementioned representations by Everstech to Hood, on September 9, 2004, Hood and Everstech entered into a "Contract for the Design, Project Management, and Commissioning of Modifications to the Existing Wastewater Treatment Plant to Convert to the scPROcess Incorporating Resource Recovery" (the "Contract").

19. Pursuant to the terms of the Contract, Hood retained Everstech to "design, project manage, and commission the scPROcess" at the Vernon Facility and to provide defined services concerning the scPROcess. See Contract Paragraph 1.

20. The Contract includes a "mutually agreed schedule" for Everstech to complete its work in 180 days for project implementation to Phase 1, and an additional 180 days for completion of Phase 2 including time for optimization of operation of resource recovery yields and COD removal efficiencies. See Contract Paragraph 6 and Appendix 4.5. The parties also agreed that Everstech would perform its "obligations with all reasonable expedition." See Contract Paragraph 6.

21. The Contract contains various express warranties by Everstech including the following:

- a. Everstech shall perform its services with “all reasonable professional skill and care exercised by consultants or engineering firms providing similar services for the design and construction of industrial wastewater treatment facilities in the United States of America.”
- b. Everstech shall complete its services “in a good and workmanlike manner.”
- c. The scPROcess supplied by Everstech to the Vernon Facility shall conform to the defined specifications, be new at the time of delivery and not a prototype, be free from all defects and malfunctions in workmanship or material and shall meet the requirements of the Performance Guarantees agreed upon between the parties.

See Contract Paragraph 7.

22. Pursuant to the terms of the Contract, Everstech agreed to undertake the following project responsibilities:

- a. Process design, plant performance, and process guarantees.
- b. Produce all construction drawings, specifications, and bid packages.
- c. Produce final process and instrumentation drawings.
- d. Assisting in preparation and submission of applications for approvals and consents.
- e. Hydraulic design, sizing and layout details for inter-process pipelines and process units and layout of ducting.
- f. Produce detailed functional specifications.
- g. Design of building and site lighting.

- h. Detailed and structural design, reinforcement schedules.
- i. Program replacement of the old effluent plant with a new one.
- j. Establish a record keeping system related to waste production and treatment, and resource recovery.
- k. Hazard and operability study.
- l. Design and specification of electrical, computer control, and data logging equipment.
- m. Site works supervision and control and overall project management.
- n. Advise on mechanical, electrical, and hydraulic commissioning of total plant.
- o. Production of test schedules and all test certificates on equipment and materials.
- p. Final commissioning.
- q. Produce final "as built" drawings and O&M manuals.
- r. Set up operation and management programs.
- s. Supervise and monitor by-product optimization, sales, and marketing.
- t. Organize seminars for Hood personnel educational program.
- u. Attend weekly project meetings and provide monthly progress reports for Hood upper management.

See Contract Appendix 2.

23. Hood and Everstech also entered into a "License, Use of Technology and Service Agreement," on September 9, 2004, with terms similar to the aforementioned Contract terms.

D. EVERSTECH'S scPROcess FAILS

24. Hood entered into the Contract with Everstech, because Everstech agreed to design and install the scPROcess on the premise that wastewater COD could be converted to protein, dried, and sold as animal feed as a cost-effective method of wastewater treatment and disposal. Additionally, effluent from the Everstech scPROcess was projected to be of a quality to allow discharge to the Village of Vernon's municipal sewerage system.

25. Hood complied with all requirements of its Contract with Everstech. For example, Hood purchased all equipment requested by Everstech, and Hood built a separate building to house the scPROcess equipment in accordance with Everstech's design suggestions and requirements.

26. In April 2005, Everstech completed the design and installation of the scPROcess at the Vernon Facility with respect to Phase 1. Everstech never completed Phase 2.

27. As of April 2005 when the scPROcess was operational, the new wastewater treatment system was supposed to do the following:

- a. Reduce Hood's operating cost by reducing condensing of permeates in Phase 1, and eliminating condensing of permeates in Phase 2.
- b. Reduce Hood's operating cost by reducing the land spreading of permeates, slop, and sludge in Phase 1, and eliminating the land spreading of permeates, slop, and sludge in Phase 2.
- c. Provide Hood with an income source by selling dried solids for animal feed.

- d. Otherwise meet all specifications, requirements, and warranties set forth in the Contract.

28. The scPROcess never met any of the aforementioned objectives set forth in the preceding paragraph. Everstech also failed to meet the performance guarantees. For example, the Centrifuge never achieved 35% solids, the Dryer never achieved 95% solids, and the liquid never met pre-established effluent requirements to be discharged in the municipal sewerage system without further treatment.

29. Hood allowed Everstech an additional year after the installation and initial start-up to commission the scPROcess.

30. During the first half of April 2006, Everstech closed its New York office and moved its operations to Indiana.

31. The scPROcess began adversely impacting Hood's primary wastewater treatment system from the start in April 2005 which caused the primary wastewater treatment system to operate outside of the standard operating parameters. The impact increased over time and worsened dramatically as attempts were made by Everstech to increase flows and loading to reach the Phase 1 design objectives.

32. As of April 17, 2006, the negative impact of the scPROcess to Hood's primary wastewater treatment system had reached a critical point. Thereafter, with notice to Everstech, Hood disassembled the scPROcess.

33. Hood has spent \$1,458,695.33 on the scPROcess as detailed in the spreadsheet attached at Exhibit A. Hood also has incurred costs to disassemble the scPROcess which have not yet been quantified.

34. The scPROcess never worked as promised by Everstech.

35. Hood ultimately learned that Everstech negligently designed and installed the scPROcess as a result of many deviations from the standard of professional care applicable to engineering services on a project of this type.

COUNT I – SPECIFIC PERFORMANCE (EVERSTECH)

36. Hood realleges paragraphs 1-35 above.

37. The Contract contains an insurance clause which states that Everstech “shall maintain a policy of Professional Indemnity (Errors and Omissions) Insurance with Lloyds of London with limits of not less than \$2,000,000 combined single limit.” Everstech “shall keep the policy in force in the specified amounts for as long as the Services are being provided by [Everstech] or indirectly through their authorized designee and for the one-year warranty period following project completion.” Everstech “shall furnish [Hood] with certificates evidencing all such insurance, which certificates shall contain provisions requiring the insurance carriers to give [Hood] at least thirty (30) days prior written notice of any cancellation or material change in any such policy or policies.” See Contract Paragraph 21.

38. Since April 2006, Hood has repeatedly requested that Everstech provide Hood with a copy of all applicable insurance policies concerning Everstech’s errors and omissions insurance coverage mandated by the Contract.

39. Despite these requests, Everstech has refused to provide Hood with a copy of its insurance policies concerning its errors and omissions insurance coverage mandated by the Contract.

40. The Contract contains the following provision concerning specific performance:

Each party recognizes and agrees that the other party's remedy at law for any breach of the provisions of this Agreement may be inadequate and agrees that for breach of such provisions, such party shall, in addition to such other remedies as may be available to it at law or in equity or as provided in this Agreement, be entitled to seek injunctive relief and to enforce its rights by an action for specific performance to the extent permitted by applicable law. Each party hereby waives any requirement for security or the posting of any bond or other surety in connection with any temporary or permanent award of injunctive, mandatory or other equitable relief. Nothing herein contained shall be construed as prohibiting either party from pursuing any other remedies available to it.

See Contract Paragraph 23 (emphasis added).

41. Hood seeks an Order against Everstech compelling Everstech to provide Hood with a copy of all applicable insurance policies concerning Everstech's errors and omissions insurance coverage mandated by the Contract within five (5) days from the date of the Order.

COUNT II – NEGLIGENCE AND PROFESSIONAL MALPRACTICE (EVERSTECH)

42. Hood realleges paragraphs 1-41 above.

43. Everstech owed Hood duties to perform its professional services in a competent and workmanlike manner, and to conform to the standard of care of a reasonable engineer in the performance of professional services.

44. Everstech breached its duties to Hood by, among other things:

- a. Negligently designed the scPROcess aeration system, because the system of diffused air is inadequate to supply oxygen in sufficient quantity to meet the design requirements for the overall system.
- b. Negligently designed the scPROcess design parameter, because it has inadequate process stability.
- c. Negligently designed the scPROcess, because it did not meet required effluent requirements.

- d. Negligently designed the scPROcess, because it did not produce the required dried sludge.
 - e. Negligently designed the scPROcess;
 - f. Negligently installed the scPROcess;
 - g. Negligently failed to provide critical information to Hood regarding the design and construction of the scPROcess; and
 - h. Negligently failed to provide Hood with accurate information regarding both its qualifications and its performance under the Contract.
45. As a direct and proximate result of Everstech's breaches of its duties, Hood has been damaged.

COUNT III – NEGLIGENCE AND PROFESSIONAL MALPRACTICE (EVERS)

46. Hood realleges paragraphs 1-45 above.
47. Evers owed Hood duties to perform its professional services in a competent and workmanlike manner, and to conform to the standard of care of a reasonable engineer in the performance of professional services.
48. Evers breached his duties to Hood by, among other things:
- a. Negligently designed the scPROcess aeration system, because the system of diffused air is inadequate to supply oxygen in sufficient quantity to meet the design requirements for the overall system.
 - b. Negligently designed the scPROcess design parameter, because it has inadequate process stability.
 - c. Negligently designed the scPROcess, because it did not meet required effluent requirements.

- d. Negligently designed the scPROcess, because it did not produce the required dried sludge.
- e. Negligently designed the scPROcess;
- f. Negligently installed the scPROcess;
- g. Negligently failed to provide critical information to Hood regarding the design and construction of the scPROcess; and
- h. Negligently failed to provide Hood with accurate information regarding both its qualifications and its performance under the Contract.

49. As a direct and proximate result of Evers' breaches of his duties, Hood has been damaged.

COUNT IV – BREACH OF CONTRACT (EVERSTECH)

50. Hood realleges paragraphs 1-49 above.

51. Hood and Everstech entered into the Contract described above, and the Contract was supported by good and valid consideration.

52. Hood, at all times, acted in good faith in performing its obligations under the terms of the Contract.

53. Everstech breached its obligations under the terms of the Contract by, among other things, failing to properly design the scPROcess, failing to provide critical information to Hood regarding the design and installation of the scPROcess, failing to properly install the scPROcess, and otherwise failing to comply with the Contract.

54. As a direct result of the breaches described above, Hood has been damaged.

COUNT V – BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING (EVERSTECH)

55. Hood realleges paragraphs 1-54 above.

56. The Contract contains an implied covenant of good faith and fair dealing between the parties.

57. Everstech breached this implied covenant by, among other things, failing to properly design the scPROcess, failing to provide critical information to Hood regarding the design and installation of the scPROcess, failing to properly install the scPROcess, abandoning the Vernon facility before commissioning the scPROcess, and otherwise failing to comply with the Contract.

58. As a direct result of the breaches described above, Hood has been damaged.

COUNT VI – BREACH OF EXPRESS WARRANTY (EVERSTECH)

59. Hood realleges paragraphs 1-58 above.

60. In the Contract, Everstech specifically represented to Hood that it provided the following express warranties in connection with the services Everstech provided to Hood:

- a. Everstech shall perform its services with “all reasonable professional skill and care exercised by consultants or engineering firms providing similar services for the design and construction of industrial wastewater treatment facilities in the United States of America”.
- b. Everstech shall complete its services “in a good and workmanlike matter.”
- c. The scPROcess supplied by Everstech to the Vernon Facility shall conform to the defined specifications, be new at the time of delivery

and not a prototype, be free from all defects and malfunctions in workmanship or material and shall meet the requirements of the Performance Guarantees agreed upon between the parties.

See Contract Paragraph 7.

61. Everstech breached its express warranties to Hood.
62. As a direct and proximate result of Everstech's breach of express warranties to Hood, Hood has been damaged.

COUNT VII – BREACH OF IMPLIED WARRANTY (EVERS)

63. Hood realleges paragraphs 1-62 above.
64. Evers impliedly warranted that he would perform his design and engineering services with the degree of skill and care ordinarily exercised by members of the profession.
65. Evers breached his implied warranties to Hood.
66. As a direct and proximate result of Evers' breach of implied warranties to Hood, Hood has been damaged.

COUNT VIII – VIOLATION OF N.Y. EDUC. LAW § 7202 (EVERS)

67. Hood realleges paragraphs 1-66 above.
68. Anyone who practices engineering in New York and/or holds oneself to be a licensed engineer in New York must be licensed by the State of New York pursuant to New York law.
69. Evers is not licensed in the State of New York to practice engineering in New York.
70. As a result of Evers' failure to be licensed to practice engineering in the State of New York, Hood has been damaged.

JURY TRIAL DEMAND

Hood demands a trial by jury on all counts and issues so triable.

WHEREFORE, plaintiff prays for relief as follows:

- (a) On the First Count against the defendants, adjudging that this Court enter a judgment awarding Hood the following relief against Evers: an Order against Everstech compelling Everstech to provide Hood with a copy of all applicable insurance policies concerning Everstech's errors and omissions insurance coverage mandated by the Contract within five (5) days from the date of the Order; costs; attorneys' fees; and any such further relief as this Court deems appropriate.
- (b) On the Second Count against the defendants, Hood requests that this Court enter a judgment awarding Hood the following relief against Everstech: compensatory damages; prejudgment interest; costs; attorneys' fees; and any such further relief as this Court deems appropriate.
- (c) On the Third Count against the defendants, Hood requests that this Court enter a judgment awarding Hood the following relief against Evers: compensatory damages; prejudgment interest; costs; attorneys' fees; and any such further relief as this Court deems appropriate.
- (d) On the Fourth Count against the defendants, Hood requests that this Court enter a judgment awarding Hood the following relief against Everstech: compensatory damages; prejudgment interest; costs; attorneys' fees; and any such further relief as this Court deems appropriate.
- (e) On the Fifth Count against the defendants, Hood requests that this Court enter a judgment awarding Hood the following relief against Everstech: compensatory damages; prejudgment interest; costs; attorneys' fees; and any such further relief as this Court deems appropriate.
- (f) On the Sixth Count against the defendants, Hood requests that this Court enter a judgment awarding Hood the following relief against Everstech: compensatory damages; prejudgment interest; costs; attorneys' fees; and any such further relief as this Court deems appropriate.
- (g) On the Seventh Count against the defendants, Hood requests that this Court enter a judgment awarding Hood the following relief against Evers: compensatory damages; prejudgment interest; costs; attorneys' fees; and any such further relief as this Court deems appropriate.

- (h) On the Eighth Count against the defendants, Hood requests that this Court enter a judgment awarding Hood the following relief against Evers: compensatory damages; prejudgment interest; costs; attorneys' fees; and any such further relief as this Court deems appropriate.
- (i) Awarding plaintiff such other and further relief as the Court deems just and proper.

Dated: June 16, 2006

NIXON PEABODY LLP



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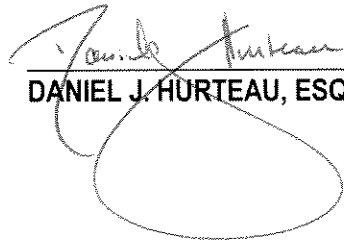
ATTORNEYS FOR PLAINTIFF

VERIFICATION

DANIEL J. HURTEAU, ESQ., affirms under penalties of perjury that:

He is an attorney admitted to practice in the State of New York, and is attorney for plaintiff, HP HOOD LLC. He makes this Verification because said plaintiff is not located in the county wherein he maintains his office. He has read the annexed Complaint, knows the content thereof, and the allegations contained therein are true and correct to the best of his knowledge and information.

Dated: June 16, 2006



DANIEL J. HURTEAU, ESQ.

EXHIBIT A

EVERSTECH PROJECT COSTS		
Capital Expenditures	\$	1,164,816.14
Utility Costs	\$	147,383.77
Chemical Costs	\$	12,750.88
Reagent Costs	\$	24,084.00
Lab Costs	\$	3,290.00
Additional Labor Costs	\$	21,871.20
Eggan Environmental Waste Hauling Co	\$	40,395.45
Demario Waste Hauling Costs	\$	44,103.89
TOTAL	\$	1,458,695.33